

REMARKS

Claims 1 through 41 are pending in the subject patent application. The Examiner has imposed a two stage restriction requirement, first requiring the Applicants to elect between the apparatus “invention” and the method “invention”, and then requiring the Applicants to elect from one of six “species”.

Specifically, in the first stage of the restriction requirement, the Examiner has found that claims 1 through 36 recite an apparatus “invention”, and that claims 37 through 41 recite a separate method “invention”. He contends that these are separate inventions because the method can be practiced by another materially different apparatus. In such cases, the MPEP requires the Examiner to suggest an apparatus which is materially different from the claimed apparatus, which can be used to practice the method. Inexplicably, rather than suggesting a different apparatus, the Examiner cites apparatus claims 24 and 27 as examples of a “materially different apparatus”.

The Applicants respectfully traverse this first stage of the restriction requirement. In requiring election between two inventions, MPEP 806.05(e) requires comparing “the process *as claimed*” and “the apparatus *as claimed*”. Specifically, this paragraph of the MPEP then goes on to state that restriction is proper when the method as claimed can be practiced by “another materially different apparatus”. In doing so, it is clear that the MPEP means that the method can be practiced by an apparatus which is materially different from the apparatus as claimed. In MPEP 806.01, it is pointed out that, in determining whether restriction should be required, “...it is the claimed subject matter that is considered, and such claimed subject matter must be compared...”. This is the whole thrust of the requirement, that is, to require an election between the apparatus and the method when the method as claimed and the apparatus as claimed are two separate inventions. Rather than meet this requirement, the Examiner has stated that the method can be practiced by two different embodiments of the claimed apparatus, as recited in two apparatus claims. If this were proper, then a restriction requirement between method and apparatus would be proper in any case where two different embodiments of the apparatus are recited in two different claims. This is clearly not a proper application of the restriction requirement.

Nevertheless, in order to file a completely responsive reply to the first stage of the restriction requirement, the Applicants elect to prosecute the apparatus “invention”. Claims 1

through 36 read on the apparatus “invention”. Further, claims 1 through 5 are generic to the apparatus “invention”. Also, claims 37 and 38 are generic to the method which is practiced with all embodiments of the apparatus. Therefore, if any one of claims 1 through 5, 37, or 38 is found allowable, claims to both the apparatus and the method must be allowed.

In the second stage of the restriction requirement, the Examiner has found that Figures 1 through 6 show Species I through VI of the invention, respectively. The Examiner has not made this second stage restriction requirement dependent upon electing either the apparatus “invention” or the method “invention”. Therefore, the Applicants must assume that the second stage of the restriction requirement is operative, regardless of which “invention” is elected in the first stage.

The Applicants respectfully traverse this second stage of the restriction requirement, in the first place, because, in addition to the Examiner’s admission that claim 1 is generic, claims 2 through 4 are also generic to the apparatus in all six of the “species”. Further, claims 37 and 38 are generic to the method which is practiced with all six “species” shown in Figures 1 through 6. So, claims 1 through 5, 37, and 38 are generic to all six “species”. Therefore, the Applicants respectfully submit that the second stage of the restriction requirement is improper and should be withdrawn.

Nevertheless, in order to file a completely responsive reply to the second stage of the restriction requirement, the Applicants elect to prosecute Species II as shown in Figure 2. Claims 1 through 6, 8, 9, 10, 24, 25, 26, 37, 38, 39 and 40 read on the apparatus and operation of Species II. Further, claims 1 through 5, 37 and 38 are generic to the apparatus and operation of all six Species. Therefore, if any one of claims 1 through 5, 37, or 38 is found allowable, claims to all six Species must be allowed.

The Applicants respectfully submit that claims 1 through 41 are patentable, and that the application is now in a condition for allowance. An early Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at (360)599-2285 for any reason that would advance the instant application to issue.

Dated this 3rd day of January, 2007.

Respectfully submitted,



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CERTIFICATE OF MAILING UNDER 37 CFR § 1.8

I hereby certify that this Response to Office Action is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria VA 22313-1450, on this, the 3rd day of January, 2007.



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